

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY C. MATTHEWS, :

Plaintiff, :

-against- : REPORT & RECOMMENDATION

OTIS BANTUM CORRECTIONAL CENTER, and : **05 Civ. 1538 (GEL) (MHD)**
FOOD SERVICE OF OTIS BANTUM
CORRECTIONAL CENTER :

Defendants. :
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TO THE HONORABLE GERARD E. LYNCH, U.S.D.J.:

Plaintiff Anthony C. Matthews commenced this pro se action pursuant to 42 U.S.C. § 1983 on February 4, 2005, when he was an inmate in the New York City correctional system. The District Court referred the case to me for general pretrial purposes on May 10, 2005.

Since plaintiff had not yet served the defendants, on May 17, 2005 we wrote him a letter, notifying him of the referral and reminding him of his responsibility under Fed. R. Civ. P. 4(m) to accomplish service of the complaint upon defendants within 120 days after its filing. (See letter dated May 17, 2005 to Anthony C. Matthews).

On August 5, 2005, noting that plaintiff had still not yet served process on defendants, we issued an order directing him to show cause by September 6, 2005 for his failure to serve, and informing him that we would recommend dismissal of the complaint in the absence of such a showing. (See Order dated August 5, 2005). The August 5, 2005 order was returned to us with the words "not in our system" and "return to sender" written on the envelope.

Since that time we have not received any further communication from plaintiff nor any other information about his current whereabouts. Moreover, although court staff has determined that plaintiff was released from custody in May 2005 and initially left a forwarding address, he has apparently not been located there for some time. Finally, the docket sheet reflects no service of process on the defendants as of this date.

In view of these circumstances, I recommend that the case be dismissed without prejudice.

Dated: New York, New York
May 8, 2006



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Report and Recommendation have been transmitted today to:

Mr. Anthony C. Matthews
141-04-10214
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East Elmhurst, New York 11370

Mr. Anthony C. Matthews
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Southern District of New York
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(By hand)